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MATTERS RELATING TO COMMITMENTS

CRITERIA FOR JOINT IMPLEMENTATION

Note by the interim secretariat

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I. INTRODUCTION

A. Convention provisions and Committee mandate

1. The Convention envisages that "efforts to address climate change may be carried our cooperatively by interested Parties" (Article 3.3). More specifically, joint implementation is addressed in Article 4.2(a) and (b). Article 4.2(d) provides that the Conference of the Parties at its first session (COP 1) shall take decisions regarding criteria for joint implementation.

2. The Committee discussed the issue of joint implementation at its eighth and ninth sessions on the basis of documentation prepared by the interim secretariat (A/AC.237/35 and A/AC.237/49) and submissions by member States (A/AC.237/Misc.33 and Add. 1-3). The Committee, at its ninth session, concluded that its discussions had led to a better understanding of the positions presented by member States, and were indicative of an emerging need for a consensus on the criteria to be defined in developing the concept (see A/AC.237/55, para. 64).

3. The Committee, taking into account the complexity as well as the far-reaching political implications of the subject, agreed to continue its discussion on the matter at its tenth session, with a view to preparing the decisions to be taken at COP 1, in accordance with the relevant provisions of the Convention (see A/AC.237/55, para. 65).

4. In this context, the Committee requested the interim secretariat to provide further documentation on the issue for consideration at the tenth session, taking into account earlier documentation, all the views expressed, and submissions by Parties and other member States. This documentation should include options for a phased approach to joint implementation, beginning with a pilot phase. Pilot phase documentation should address objectives, a list of possible criteria and institutional arrangements (see A/AC.237/55, para. 66).

B. Scope of the note

5. In accordance with the request by the Committee, this note explores how a phased approach, beginning with a pilot phase, might help to address the complexities of the issue. It is based, inter alia, on the submissions by Parties and other member States contained in A/AC.237/Misc.37 and Add.1. Section II considers a phased approach to joint implementation, including possible objectives for a pilot phase. Section III considers possible criteria for selecting joint implementation activities in a pilot phase. In this context, it revisits the possible criteria that are proposed in the note on criteria for joint implementation prepared for the ninth session (A/AC.237/49). Section IV discusses the basis for institutional arrangements in a pilot phase. The last section mentions some issues relating to further phasing.

C. Possible action by the Committee

6. The main options before the Committee are:

(a) To aim at reaching consensus before COP 1 on a fully elaborated scheme for joint implementation, including criteria for its application; or

(b) To agree on a phased approach, focusing on a pilot phase.

If the latter option were chosen, the Committee may wish to:

(i) Start addressing the issues of "crediting" and the role of joint implementation in possible additional commitments, or

(ii) Leave these issues for discussion at a later stage.

7. The interim secretariat proposes that the Committee follow option (b.ii) and has put forward considerations on a number of issues that would, in the context of that option, require decisions by the Committee, in particular:

- The objectives and modalities of a pilot phase;
- The features of a communication and review process on joint implementation;
- Possible criteria for deciding on joint implementation activities; and
- The functions that could be the basis for institutional arrangements for a joint implementation scheme.

The Committee may take note of some issues related to future phases as mentioned in section IV. The Committee may wish to convey to the COP any conclusions and decisions resulting from its decisions.

II. A PHASED APPROACH TO JOINT IMPLEMENTATION

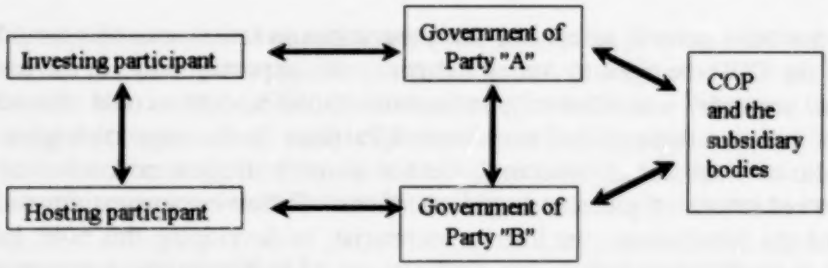
A. The concept of joint implementation

8. Joint implementation is embedded in the present commitments in the Convention but, as noted in A/AC.237/49, paragraph 46, the complexities surrounding the issue and the time needed to develop and implement activities are likely to prevent joint implementation from making a more than modest contribution to the limitation of global emissions in the next few years. It has

also been recognized that joint implementation may have a more prominent role to play in the context of additional commitments, where it has the potential to create many new partnerships in limiting global emissions, leading to additional transfers of technology and/or finance.

9. Joint implementation would refer especially to **financial or technological participation** by a participant in one country ("A") in an activity undertaken together with another participant in another country ("B"). This financial participation would relate to an activity which would limit or reduce greenhouse gas emissions or increase greenhouse gas removals. This participation by the partner in "A" may provide all or most of the total investment, but it may also be a smaller part, providing dedicated investment for a specific emission reduction. In the present note, the participant in "A" may be referred to as the "investing participant", and that in "B" as the "hosting participant". Likewise, the Parties "A" and "B" may be referred to as "investing Party" and "hosting Party". Such references should be understood in a neutral way, as descriptive expressions for partnerships.

10. Schematically, joint implementation involves the following relations:



Other relations could exist as well, such as between a participant in one Party and the Government of the other Party. Also, direct contact could exist between a Convention institution and participants in joint implementation in the context of a communication and review process or of a study project (noting the responsibility of Governments).

B. A phased approach, beginning with a pilot phase

11. The concept of joint implementation is a new and, as yet, untested approach to addressing a global environmental problem in a cost-effective manner. In view of the controversies surrounding it, and the short time remaining before COP 1, reaching consensus on a fully elaborated scheme, including on the criteria for its application, may be difficult to achieve in time for COP 1. In this context, the Committee has shown interest in a phased approach, beginning with a pilot phase (see para. 4, above).

12. A pilot phase might allow the Committee, and later the COP:

- To test the concept;
- To develop a better understanding of the complex issue;
- To develop a broad base of experience;
- To move forward in addressing the political implications of the subject in a step-by-step manner, without prejudice to the next steps.

A pilot phase might also help to make (potential) participants in joint implementation activities better aware of its possibilities and pitfalls.

13. While a pilot phase would relate to existing commitments, linkages have been made between joint implementation and possible additional commitments under the Convention. As the nature of these commitments and the mandate for such a negotiating process have yet to be defined, it would be speculative at this point to discuss phases beyond the pilot phase. The Committee may therefore consider agreeing on a phased approach but, in that context, focus on a pilot phase for joint implementation. Any decisions on further phases could be negotiated at a later stage.

14. There has been general agreement that joint implementation activities would, within the criteria set by the COP, be open to Annex I Parties. An important issue in the discussions of the Committee, however, was whether joint implementation activities could also take place on a voluntary basis between Annex I and non-Annex I Parties. Such cooperation gave rise to much interest, but also to a number of concerns. Central to many of these concerns was the issue of "crediting" for reductions of greenhouse gas emissions. Following suggestions in the discussions and the submissions, the interim secretariat, in developing this note, has assumed that no crediting would take place during a pilot phase. The Committee may consider whether excluding "crediting" during the pilot phase would allow all Parties to participate in joint implementation activities. The Committee may also consider whether this condition, in combination with the possible criteria proposed in section III below, constitutes a sufficient response to political concerns voiced during its discussions on the issue.

C. Objectives for a pilot phase

15. The Committee may consider whether the following list of **objectives** for the pilot phase would be supportive of the purposes listed in paragraph 11, above:

(a) To identify and address conceptual and practical issues in developing and implementing joint implementation activities;

(b) To provide an opportunity to the participants to determine the costs and benefits of joint implementation in a practical fashion;

(c) To identify and address the specific problems of different groups of countries;

(d) To test the criteria set by the COP;

(e) To involve the private sector, in order to explore new possibilities for transfer and widespread use of environmentally-friendly technologies and/or finance; and

(f) To build institutional arrangements and prepare for follow-up.

D. Elements of a pilot phase

16. With respect to **eligibility for participation** in a pilot phase, the Committee may consider whether the experimental, non-binding nature of the phase justifies eligibility for all Parties. The proposal to set aside from the pilot phase the issue of "crediting" and additional commitments may be taken into account in this context.

17. The range of **eligible activities** for a pilot phase is addressed in section III on "possible criteria for a pilot phase".

18. COP 1 may be considered as a **starting date** for a pilot phase. Alternatively, a retroactive start of the pilot phase has been suggested, for example, the date of the conclusion of the Convention, that is, May 1992, or some other relevant date. Whatever the starting date, it would be helpful to make use of **early experiences**, including activities already under way. Consequently, it has been suggested to allow ongoing activities to be included in the pilot phase. If so, such activities would have to be evaluated against the criteria to be agreed.

19. With respect to the **duration** of a pilot phase, one option would be an open-ended arrangement whereby, on the basis of yearly evaluations, each session of the COP would decide to extend or modify the pilot phase or shift to the next phase. Another option would be to agree on a set duration of, for example, 3 to 5 years, allowing experience to evolve. After such period, a thorough evaluation could be done. A third option would be to agree to do a thorough evaluation after a set period, but with interim progress reports to assess results during that period.

E. Communications

20. For a system of joint implementation to be transparent, well-defined and credible, it would be essential to have an effective communication and review system in place. The information communicated by the Parties would be the basis for the COP to review the implementation of the criteria it has set and to decide on acceptance of activities as joint implementation, as well as for preparing further decisions. To this end, the COP would need information on specific joint implementation activities, as well as on the aggregate efforts by

Parties with regard to joint implementation. It may be assumed that each Party involved in a joint implementation activity would be required to communicate information on such activities to the COP (see A/AC.237/49, para. 44). However, in line with the provisions of Article 12.8, Parties involved in a particular joint implementation activity may prefer to make joint communications. In order to keep the communication system efficient and to minimize the burden to countries, the Committee may consider whether it wishes to integrate, to the extent possible, communications on joint implementation with the national communications provided for in Article 12.

21. The Committee may, with respect to communications on joint implementation, consider the following issues:

- The type and detail of information that would have to be provided, as well as the frequency of providing communications;
- The integration of information on joint implementation activities in national communications by those Parties that would be required to provide national communications under Article 12;
- Communications requirements for those Parties that would not be required to provide national communications under Article 12;
- The modalities for reviewing compliance with the criteria and guidelines from the COP and assessing other relevant information on the matter;
- The role of the subsidiary bodies, in particular the designation of the body responsible for overseeing the reviews and assessments; and
- Measures to promote access to information about joint implementation, such as setting up a register on joint implementation activities.

III. CRITERIA FOR A PILOT PHASE

A. Considerations on criteria

22. A list of possible criteria for a pilot phase, drawn from the list of possible criteria that was contained in document A/AC.237/49, is proposed in section III B, below, as guidance to participants and Parties in preparing for and deciding on activities. Some of the criteria in that list were intended to clarify the principles underlying the concept of joint implementation, rather than serving as yardsticks for judging specific activities. These "possible criteria" (PC), which are not considered further, are the following:

- PC 1: Joint implementation refers only to joint action to implement policies and measures, and in no way modifies the commitments of each Party;

- PC 2: Joint implementation is distinct from the provision of assistance to other Parties;

- PC 4: Joint implementation would be undertaken in conjunction with domestic action; and

- PC 9: Joint implementation activities could address any greenhouse gas or any combination of gases.

23. Three other "possible criteria" from the list in that document are likewise not included in the possible list for a pilot phase, but for different reasons:

- PC 10: "Parties should give priority to joint implementation activities resulting in emissions limitations" is a criterion indicating a preference. Making it a criterion for selecting activities, ex ante, might be seen as conflicting with the open character of a pilot phase, since the purpose of such phase would be to assemble the broadest possible collection of experiences. Should the COP find, after some time, that the overall balance of activities was skewed, it might consider what incentives or discentives might be helpful to strike a better balance for the remainder of the pilot phase. At the end of the pilot phase, PC 10 would be an element of the evaluation ex post.

- PC 11: "The benefits of joint implementation activities may be shared between the Parties involved" would not be relevant to a pilot phase without "crediting".

- PC 12: "Each of the Parties involved in a joint implementation activity would have to communicate relevant information thereon to the COP"; this has been discussed in section II E, above.

24. The criteria for the pilot phase will need to be made operational, for example, by providing guidelines and setting procedures. The comments in the following section offer some considerations and suggestions in this regard, as a starting point for the development of such guidelines. Developing guidelines and procedures could, after adoption of the criteria themselves, take place during the pilot phase, on the basis of experience and in the light of identified needs; the Committee may consider making recommendations on this matter to the COP.

B. Possible criteria for selecting joint implementation activities

25. **Possible criterion A: Joint implementation is a voluntary activity under the responsibility of two or more Parties; such activity must be undertaken or accepted by the Governments concerned** (previous PC 3 in A/AC.237/49).
Joint implementation is a form of cooperation between Parties to implement the Convention. Participants in an activity, however, would most likely not be the Governments themselves, but rather governmental, parastatal or private organizations or companies under their jurisdiction. In cases where the initiative for a joint implementation activity was taken by the Governments themselves, it is evident that it would be a voluntary action under the responsibility of two or more Parties. In this case, the Governments would have to ensure that such activity met the criteria.

26. In cases where the initiative was taken by actors other than Governments, it would be up to the Governments concerned to decide on acceptance of such activity as joint implementation. Domestic procedures would be needed to establish eligibility with the criteria and guidelines agreed by the COP, as well as with any national rules. The Parties involved would also need to establish a mutual contact to decide whether they wished to regard this activity as a joint implementation of the Convention. It would be up to the Parties to establish their own national procedures. However, Parties could consider harmonising their procedures and thereby contribute to efficient decision-making (see also section IV on institutional arrangements).

27. A question of assent might arise in cases where a multilateral investment bank or another type of financial intermediary were involved. In such cases, the suppliers of the finance could originate from a Party or Parties other than the Party where the financial intermediary was located. It would have to be clarified which of these Parties should be responsible for reviewing the activity under consideration from the standpoint of the investing Party.

28. **Possible criterion B: Joint implementation should be beneficial to all Parties involved, and be consistent with their national priorities for sustainable development** (previous PC 5).
It would be up to the hosting Party to guide potential participants in joint implementation activities on its national priorities for sustainable development. To this end, the development of national programmes in accordance with Article 4.1(b) might be helpful in identifying opportunities for activities that would both reduce greenhouse gas emissions and contribute to development priorities. Hosting Parties could also develop and make known lists of potential projects. They could also refuse to endorse any project not consistent with their national priorities for sustainable development. Possible criterion D (on the assessment of economic, social and environmental effects) would also be relevant. Information that might be assembled under the auspices of the Subsidiary Body for Scientific and Technological Advice (SBSTA) on environmentally sound technologies and on the transfer of technology could also be supportive in this respect.

29. **Possible criterion C: Joint implementation activities should bring about real and measurable results, determined against reasonable baselines** (previous PC 6).
The results referred to this criterion would be those to limit or reduce greenhouse gas emissions. Other results, of local or national interest, would be relevant as well; these are addressed in possible criteria B and D. A joint implementation activity would have to lead to results beyond "business-as-usual". In order to determine the costs and benefits of a joint implementation activity, it would therefore be necessary to determine the difference between the actual project and the "business-as-usual" baseline. This would involve defining the baseline and calculating its costs and benefits, as well as determining the situation for the joint implementation activity under consideration. For this, numerous methodological questions would need to be resolved, such as those for measuring emissions from sources and removals by sinks for the different greenhouse gases involved (in case these have not been provided, for example, by the IPCC). Methodologies would be needed for establishing reasonable "business-as-usual" baselines, the assumptions with respect to these baselines being based on considerations of sustainable development, including effective environmental standards and sound economic policies. For example, activities that would bring a reasonable return on investment might be considered "business-as-usual". Activities would have to be judged against their respective baselines, taking into account all relevant factors, including, for example, the effects over the full fuel or life cycle of an activity and secondary effects such as an induced shift of emissions to other places. It would also be necessary to establish rules for determining the time horizon for considering the effects of an activity.

30. **Possible criterion D: The impacts of joint implementation activities would have to be assessed with respect to their economic and social, as well as environmental, effects** (previous PC 7).
In applying this criterion, Parties could rely on the strategies they employ to implement Article 4.1(f). Additionally, they may want to make use of relevant guidelines such as those described in the "United Nations Development Programme Handbook and Guidelines for Environmental Management and Sustainable Development" 1/.

31. **Possible criterion E: Joint implementation activities should be accompanied by measures to ensure their long-term environmental benefits** (previous PC 8, reworded).
The most basic "insurance policy" would be to select projects that are clearly beneficial to the hosting Party, also with a view towards the longer term. Even then, a concern would be how to ensure that an activity will perform as planned. This might involve formal insurance against failure, or other provisions to safeguard results.

IV. INSTITUTIONAL ARRANGEMENTS FOR A PILOT PHASE

A. "Top-down" or "bottom-up" approach

32. Undertaking a joint implementation activity is conceptually complex, combining the many aspects of international project investment with those related to the implementation of the Convention. Thus, any processes and institutions set up for managing joint implementation activities should help to keep arrangements as simple as possible.

33. Possible arrangements can be approached from a "top-down" or from a "bottom-up" perspective. In the former approach, joint implementation activities, at least in the pilot phase, would be closely followed by the COP and the other Convention institutions. Institutional arrangements would be such that functions such as determining compliance with the criteria, monitoring, verification etc., would have a strong link with the Convention institutions. This would ensure overall consistency and credibility. In the "bottom-up" approach, the prime responsibility for ensuring coherence with criteria and guidelines would lie with the participants and the Parties involved in each activity. A communication and review process would ensure that adequate information would be made available to the COP for evaluating the activities in aggregate. The Committee may wish to indicate its preference for one or the other approach, or a combination thereof, that both ensures international credibility and encourages voluntary initiative.

B. Functions

34. The design of institutional arrangements should be related to the functions to be performed in a pilot phase ("form follows function"). The following paragraphs identify some of these functions, and the Committee may take these into account in its considerations. Some of these functions may be carried out through the Convention institutions and a related network of cooperative organizations and institutions. In most of these cases, any arrangements involving the Convention institutions would be supplemented by others, such as bilateral cooperation between Parties or actions by private institutions or businesses. Some other functions may not involve the Convention institutions, but may be carried out through bilateral cooperation or private actions only. Such arrangements would also depend, inter alia, on the Committee's preference for a "bottom-up" or "top-down" approach.

35. A first function could be to **facilitate the match** between participants. This function could consist of several elements, including the identification of potential participants. Since searching for a potential partner to participate in joint implementation can be cumbersome and/or costly, facilitating this search might enlarge participation and lower the costs. A "bulletin board" service would help match-making. It would list the "offers" from potential investing and hosting participants, as well as other relevant information such as contacts designated by Parties for dealing with joint implementation matters. Another element of such a function could be the identification of promising technologies or of sectors that offer

opportunities for greenhouse gas reductions. Potential participants might benefit from such information, or from support in transferring technologies. In performing this function, it might be possible to draw upon the work of the SBSTA, which would in turn be supported by a network of collaborating organizations and institutions. A third element could be active "brokering" to facilitate contacts and eventually agreement between participants.

36. A second function could be to **assist in project development.** This function might, in addition to formulating project concepts, include analysis of technical, legal, social and environmental aspects, analysis of costs and benefits and, if necessary, assistance in adapting the project to meet criteria and guidelines for joint implementation.

37. A third function could be to arrange a **bundling of activities**. Potential investing participants might prefer to provide financing for a portfolio of joint implementation activities rather than for a specific activity. Financial institutions might be interested in offering such a service. The implications for applying this criterion would have to be considered (see para. 27, above).

38. A fourth function could relate to the roles of the Parties and the COP in **recognizing or accepting activities** as "joint implementation". For an activity to be recognized as joint implementation, it would need to be accepted by both the investing and hosting Parties and, subsequently, by the COP. Appropriate procedures would have to be established within each Party willing to participate in joint implementation. Parties will also have to make provisions for recording acceptance, for international follow-up, and for communicating to the COP. For example, they might nominate a contact person or body responsible for coordinating joint implementation activities at the Government level. This would be helpful for domestic as well as international contacts. Parties could consider harmonizing their national procedures and thereby contributing to efficient decision-making.

39. A fifth function could be to **monitor project achievement**. For this purpose, regular collection of emissions data and other data would have to take place throughout the lifespan of each project. Such data would be needed for several reasons such as:

- Following project performance (including project failure);
- Gathering information on which projects worked and which did not; and
- Refining criteria and guidelines.

Responsibility for monitoring project performance could be assigned in several ways, for example, by making monitoring an integral part of any activity ("self-monitoring") in combination with an evaluation procedure, including independent auditing to verify the characteristics and performance of an activity. Monitoring might also be performed by an

independent body.

40. A sixth function could relate to the function of the Parties in **communicating information** to the Convention institutions on activities under their jurisdiction (as discussed in section II E).

41. A seventh function could be the function of the COP to **review the information and evaluate experiences** so far. One of the issues might be the balance of activities in the pilot phase (see para. 23, above). This evaluation could also provide the basis for considerations on the next phase of joint implementation.

42. The Committee may express its opinion on the utility of these functions before considering who should perform them and how that should be done.

V. ISSUES RELATING TO FURTHER PHASES

43. A number of aspects of joint implementation might need to be taken up in due time, during the pilot phase, but in relation to future phases of joint implementation. These aspects include "crediting" and the possible role of joint implementation in any additional commitments.

44. With respect to crediting, one issue to be addressed would be the development of accounting procedures, including suitable methodologies to assess the results with respect to the different greenhouse gases. A further issue that would have to be clarified in due course would be whether results would be accounted for on a gas-by-gas basis only, or whether an aggregation on the basis of global warming potentials (GWPs) could take place. It might also be necessary to address such issues as insurance against project failure, dispute resolution, and the consequences of withdrawal of a Party (Article 25 of the Convention).

45. The role of joint implementation might need to be addressed in the context of additional commitments. In such case, the Committee might see a need for compiling and synthesizing relevant information on joint implementation from Parties and other member States as early input to any negotiations on additional commitments.

46. Another issue that might be addressed is that of the resource implications of a joint implementation scheme. The operational and institutional aspects of joint implementation would entail costs for participants, for Parties and the Convention institutions. It might be appropriate to internalize these costs as much as possible in the financial arrangements of the activities. Assessing impacts, monitoring and auditing might be treated as integral parts of an activity. With respect to the costs entailed by Parties and the Convention institutions, it might be considered appropriate to recover these from participants in joint implementation through some form of user fees, especially if "crediting" were to take place.

47. In carrying forward the work on joint implementation, the Committee, and later the COP, may draw upon the outcome of discussions on the role of joint implementation in the framework of the Convention on Long-Range Transboundary Air Pollution. It should be noted, however, that there are essential differences between the two Conventions and between the compounds under consideration that would have to be taken into account.

Note

1/ United Nations Development Programme (UNDP), Environment and Natural Resources Group, New York (1992).

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